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6 UNITED STATES DISTRICT COURT  
7 WESTERN DISTRICT OF WASHINGTON  
8 AT SEATTLE

9 SANDRA L. FERGUSON,

10 Plaintiff,

11 v.

12 BRIAN J. WAID AND THE WAID  
13 MARITAL COMMUNITY,

14 Defendants.

Case No. C17-1685 RSM

ORDER GRANTING DEFENDANT’S  
RULE 12(c) MOTION FOR JUDGMENT  
ON THE PLEADINGS

15 This matter comes before the Court on Defendant Brian J. Waid’s Motion for Judgment  
16 on the Pleadings. Dkt. #16.

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18 Plaintiff asserts causes of action against Defendants for “Deprivation of Right to Due  
19 Process” under the Fourteenth Amendment, “Right to Equal Protection” under the Fourteenth  
20 Amendment, “Right to Free Speech” under the Fourteenth Amendment, and a Title VII claim.  
21 Dkt. #1. All causes of action are based on the repeated allegation that “Defendant reached an  
22 understanding with state bar officials to file a meritless grievance against Ferguson and did file  
23 said grievance against Ferguson, becoming a willful participant in joint activity with state  
24 officials...” *Id.*

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26 Defendant argues that all of Plaintiff’s causes of action “are based on [Defendant’s]  
27 communications with the Washington State Bar Association,” but that “Defendant is immune  
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ORDER GRANTING DEFENDANT’S RULE 12(c) MOTION FOR JUDGMENT ON THE  
PLEADINGS - 1

1 from litigation based on, or related to, communications with the WSBA under Rule for  
2 Enforcement of Lawyer Discipline 2.12, the *Noerre-Pennington* Doctrine, and RCW 4.25.510  
3 (Washington Anti-SLAPP Statute). Dkt. #16 at 8. Defendant also argues that Plaintiff's claims  
4 are barred by *res judicata* because they are claims that could have been brought in the previous  
5 case *Caruso v. Washington State Bar Association*, No. C17-00003 RSM, and that this Court  
6 should abstain from interfering in Plaintiff's ongoing state disciplinary proceedings under the  
7 *Younger* doctrine.<sup>1</sup>

9 The Washington Rules of Professional Conduct ("RPCs") provide that a lawyer "should  
10 inform the appropriate professional authority"—e.g., the WSBA Office of Disciplinary  
11 Counsel—if the "lawyer knows that another lawyer has committed a violation of the applicable  
12 [RPC's]." RPC 8.3(a). The Washington Rules for Enforcement of Lawyer Conduct ("ELC")  
13 provide that "[c]ommunications to the . . . [WSBA] disciplinary counsel . . . are absolutely  
14 privileged, and no lawsuit predicated thereon may be instituted against any grievant, witness, or  
15 other person providing information." ELC 2.12.

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17 The *Noerre-Pennington* immunity "applies to claims under §1983 that are based on the  
18 petitioning of public authorities." *Empress LLC v. City & Cty. of San Francisco*, 419 F.3d  
19 1052, 1056 (9th Cir. 2005).

20  
21 Washington's Anti-SLAPP statute, RCW 4.24.510, provides:

22 A person who communicates a complaint or information to any  
23 branch or agency of federal, state, or local government, or to any  
24 self-regulatory organization that regulates persons involved in the  
25 securities or futures business and that has been delegated authority  
26 by a federal, state, or local government agency and is subject to  
oversight by the delegating agency, is immune from civil liability  
for claims based upon the communication to the agency or

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28 <sup>1</sup> See *Middlesex Cty. Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423, 432, 102 S. Ct. 2515, 2521, 73 L. Ed. 2d 116 (1982) ("Where vital state interests are involved, a federal court should abstain unless state law clearly bars the interposition of the constitutional claims." (internal quotations omitted)).

organization regarding any matter reasonably of concern to that agency or organization.

The Court has reviewed the pleadings and agrees with Defendant that all of Plaintiff's claims are based on Defendant's communications with the Washington State Bar Association. The Court agrees with Defendant that his communications were privileged under Washington State law and could not form the basis of this lawsuit. *See* ELC 2.12. Further, such communications were protected by the *Noerr-Pennington* doctrine and Washington's Anti-SLAPP statute given the above law. Plaintiff has been unable to present a valid response to any of these arguments. Accordingly, judgement on the pleadings is warranted in Defendant's favor and these claims are dismissed with prejudice. The Court need not reach Defendant's *res judicata* and *Younger* doctrine arguments.

The Court will address Defendant's requests for attorneys' fees, expenses, and statutory damages under RCW 4.24.510 and 42 U.S.C. § 1988 in a subsequent order on Defendant's Motion for Sanctions (Dkt. #25). Having reviewed the relevant briefing and the remainder of the record, the Court hereby finds and ORDERS that:

- 1) Defendant Brian J. Waid's Motion for Judgment on the Pleadings (Dkt. #16) is GRANTED.
- 2) Plaintiff's claims are DISMISSED with prejudice.
- 3) This case remains open.

DATED this 9<sup>th</sup> day of March 2018.



RICARDO S. MARTINEZ  
CHIEF UNITED STATES DISTRICT JUDGE